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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 TECHLINK, INC., a Hawaiian corporation,
11 Plaintiff,
12 v.
13 GRAYS HARBOR PUBLIC
14 DEVELOPMENT AUTHORITY, a
15 Washington public corporation,
16 Defendant.

Case No. C06-5424RJB

ORDER ON
DEFENDANT'S MOTION
TO AMEND ANSWER TO
INCLUDE A
COUNTERCLAIM

17 This matter comes before the court on defendant's Motion to Amend Answer to Include a
18 Counterclaim. Dkt. 14. The court has considered the relevant documents and the remainder of the file
19 herein.

20 PROCEDURAL HISTORY

21 On July 27, 2006, plaintiff Techlink, Inc. (Techlink) filed a diversity action against defendant Grays
22 Harbor Public Development Authority (GHPDA) for breach of contract. The contract at issue allegedly
23 gave Techlink sole rights to sell certain nuclear equipment owned by GHPDA for a period of five years.
24 The complaint alleges that GHPDA breached its contract with Techlink by failing to provide to Techlink
25 with proper nuclear documentation, after assuring Techlink that GHPDA possessed all the necessary
26 nuclear documentation.

27 On November 30, 2006, GHPDA filed a motion, requesting that the court permit GHPDA to file an
28 amended answer to include a counterclaim for an unpaid invoice of \$260,000. Dkt. 14. GHPDA

1 maintains that, after the answer was filed, a dispute arose between the parties regarding the sale for
2 \$260,000 of four Reactor Coolant Pump Motors that were delivered in July of 2006 but for which
3 GHPDA has not been paid; GHPDA wishes to pursue a claim for this amount as a counterclaim.

4 Techlink opposes the motion to amend. Techlink maintains that Paragraph 9 of the Marketing and
5 Sales Agreement (contract) contains the following language under the Dispute Resolution clause:

6 If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot
7 be settled through negotiation, the parties agree first to try in good faith to settle the dispute by
8 mediation administered by the American Arbitration Association under its Commercial Mediation
9 Rules.

10 If any controversy or claim arising out of or relating to this contract, or the breach thereof, cannot
11 be settled by mediation, the parties shall meet to determine other methods by which the dispute is to
12 be resolved. *** If the parties do not agree to arbitrate the dispute within 30 days of a request by
13 one party, then the dispute shall be resolved through litigation.

14 See Dkt. 16, at 2. Accordingly, Techlink believes that the parties should resolve the issue about the four
15 Reactor Coolant Pump Motors by mediation and/or arbitration before pursuing the claim as a counterclaim
16 in this civil action. Techlink contends that it will be prejudiced if GHPDA is permitted to pursue this claim
17 as a counterclaim in this action because the contract was intended to require the parties to engage in less
18 expensive forms of dispute resolution before resorting to litigation.

19 LEGAL STANDARD

20 Fed.R.Civ.P. 15(a) provides in relevant part as follows:

21 A party may amend the party's pleading once as a matter of course at any time before a responsive
22 pleading is served or, if the pleading is one to which no responsive pleading is permitted and the
23 action has not been placed upon the trial calendar, the party may so amend it at any time within 20
24 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or
25 by written consent of the adverse party; and leave shall be freely given when justice so requires.

26 In deciding whether to grant a motion to amend, the court considers a number of factors, including
27 undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously
28 allowed, undue prejudice to opposing parties, harm to the movant if leave is not granted, and futility of the
amendment. *Foman v. Davis*, 37 U.S. 178, 182 (1962); *Martinez v. Newport Beach City*, 125 F.3d 777,
785 (9th Cir. 1997).

29 DISCUSSION

30 It is not clear from the documents submitted by the parties that or how the dispute regarding the
31 sale of the Reactant Pump Coolant Motors relates to the claims at issue in the breach of contract action

1 pled in the complaint. If the proposed counterclaim is separate and independent from the cause of action
2 currently before the court, it appears that the parties should employ the dispute resolution measures set
3 forth in the contract before litigating the counterclaim in this civil action. If the proposed counterclaim is
4 related to or arose out of the breach of contract action pled in the original complaint, it may not be
5 necessary under the contract or cost effective for the parties to pursue the original claim and the
6 counterclaim in parallel proceedings. GHPDA's motion to amend the answer to include a counterclaim
7 should be denied without prejudice. The parties are urged to discuss the issue and attempt to determine
8 the most cost efficient and effective means of resolving the counterclaim.

9 Therefore, it is hereby

10 **ORDERED** that defendant Grays Harbor Public Development Authority's Motion to Amend
11 Answer to Include a Counterclaim (Dkt. 14) is **DENIED WITHOUT PREJUDICE**.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
13 party appearing *pro se* at said party's last known address.

14 DATED this 19th day of December, 2006.

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16 Robert J. Bryan
17 United States District Judge
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